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**John Pomaville d/b/a John Pomaville Plumbing, a sole proprietorship and Local 333, United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO. Case 7-CA-47830**

July 22, 2005

## DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN  
AND SCHAUMBER

The Acting General Counsel seeks summary judgment in this case pursuant to the terms of a settlement agreement. Upon a charge filed by the Union on August 30, 2004, the General Counsel issued the original complaint on October 28, 2004, against John Pomaville d/b/a John Pomaville Plumbing, a sole proprietorship, the Respondent, alleging that it had violated Section 8(a)(1) and (3) of the Act.

Subsequently, on January 12, 2005, the Respondent and the Union entered into a settlement agreement, which was approved by the Regional Director for Region 7 on January 13, 2005. The settlement agreement required the Respondent to, among other things, pay Tony Hernandez \$5244 in backpay, pay George Urdiales \$6293 in backpay, and pay Alfred Walters \$7800 in backpay, by no later than Friday, February 18, 2005. The settlement agreement stated that these payments constituted backpay for the period August 28, 2004 through January 14, 2005.<sup>1</sup>

In addition, the settlement agreement required the Respondent to make an additional payment to Alfred Walters in the following circumstances:

The parties recognize that the amount of backpay to be paid to Alfred Walters represents a compromise of the total amount of backpay due him. It is agreed, therefore, that in the event he is required to reimburse the Michigan Unemployment Agency (MUA) for any unemployment compensation he received for the period August 28, 2004 through January 14, 2005, Charged Party will pay over to Walters the amount that he is required to reimburse MUA, up to but not more than \$6,000.00. Charged Party will make the payment no later than 30 calendar days after notice that such payment is due.

The settlement agreement also contained the following provision:

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<sup>1</sup> The settlement agreement also required the Respondent to post a notice to employees.

**Non-Compliance with Agreement**—The Charged Party agrees that, in case of non-compliance by the Charged Party with any of the terms of this Agreement, including but not limited to failure to make timely installment payments of monies, and after 15 days notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by Charged Party, the Regional Director shall reissue the complaint previously issued in the instant case. Thereafter, the General Counsel may file a motion for summary judgment with the Board on the allegations of the just reissued complaint concerning the violations alleged therein. Charged Party understands and agrees that the allegations of the aforementioned complaint may be deemed to be true by the Board, that it will not contest the validity of any such allegations, and that the Board may enter findings, conclusions of law, and an order on the allegations of the aforementioned complaint. On receipt of said motion for summary judgment, the Board shall issue an Order requiring the Charged Party to show cause why said Motion of the General Counsel should not be granted. The only issue that may be raised in response to the Board's Order To Show Cause is whether Charged Party defaulted upon the terms of this Settlement Agreement. The Board may then, without necessity of trial or any other proceeding, find all allegations of the complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Party, on all issues raised by the pleadings. The Board may then issue an Order providing full remedy for the violations found as is customary to remedy such violations, including but not limited to the provisions of this Settlement Agreement. The parties further agree that the Board Order and a U.S. Court of Appeals Judgment may be entered hereon ex parte.

By letter dated January 25, 2005, the Regional Director for Region 7 provided the Respondent with a conformed copy of the settlement agreement, and copies of the notice to employees for posting. This letter also advised the Respondent to take the steps necessary to comply with the settlement agreement. Thereafter, on February 17, 18, 22, 25, and March 4 and 18, 2005, the compliance officer for the Region reminded the Respondent of its obligation to pay the required backpay amounts and to post the notice to employees.

By letter dated March 1, 2005, the compliance officer again reminded the Respondent of its obligations to pay backpay and post the notice, and warned that its failure to do so may result in the filing of a Motion for Summary Judgment. By letter of March 21, 2005, the Regional Director advised the Respondent that if it did not cure its noncompliance by April 5, 2005, the Regional Director would reissue the complaint and file a Motion for Summary Judgment. Shortly thereafter, the Respondent ad-

vised the Region that it posted the notice to employees on March 18, 2005. The Region has confirmed that the notice was posted. The Respondent, however, has not paid any of the backpay required under the settlement agreement.

Accordingly, pursuant to the terms of the noncompliance provision of the settlement agreement, the Regional Director reissued the complaint on April 15, 2005.

On April 22, 2005, the General Counsel filed a Motion for Summary Judgment with the Board. On April 27, 2005, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

#### Ruling on Motion for Summary Judgment

According to the uncontroverted allegations in the General Counsel's motion, the Respondent has failed to comply with the settlement agreement by failing to remit any of the agreed-upon backpay amounts due employees under the settlement agreement. Consequently, pursuant to the noncompliance provisions of the settlement agreement set forth above, we find that all of the allegations of the complaint are true.<sup>2</sup> Accordingly, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

#### FINDINGS OF FACT

##### I. JURISDICTION

At all material times, the Respondent has been owned by John Pomaville as a sole proprietorship, doing business as John Pomaville Plumbing, with a place of business in Lansing, Michigan, and has been engaged in the construction industry as a contractor providing plumbing services.

During the year 2003, the Respondent, in conducting its business operations described above, purchased and received at its Lansing facility products, goods, and materials valued in excess of \$50,000 directly from points located outside the State of Michigan.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that Local 333, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

##### II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, John Pomaville has been the owner of the Respondent and a supervisor of the Respondent within the meaning of Section 2(11) of the Act and an agent of the Respondent within the meaning of Section 2(13) of the Act.

The Respondent, by its agent John Pomaville, at its Lansing facility:

(1) About May 5 and June 10, 2004, advised employees that he did not want any union activity in his shop.

(2) About May 5, 2004, directed employees to confirm in writing that they would not engage in union activities.

(3) About June 11 and July 26, 2004, distributed letters to employees threatening them with discharge if they engaged in any union activity and asked them to sign and return the letters to the Respondent.

(4) About August 23, 2004, conveyed the impression to employees that their union activities were under surveillance by indicating it was aware that certain of its employees were supporters of the Union and that the Respondent has contact with various union officials to obtain such information.

(5) About August 27, 2004, permanently laid off employees Tony Hernandez, George Urdiales, and Alfred Walters.

The Respondent permanently laid off employees Hernandez, Urdiales, and Walters because of employees' sympathies for the Union, and to discourage employees from engaging in any activities on behalf of the Union, or any other protected concerted activities.

#### CONCLUSIONS OF LAW

1. By advising employees that it did not want any union activity in its shop; by directing employees to confirm in writing that they would not engage in union activities; by threatening employees with discharge if they engaged in union activity; and by conveying the impression to employees that their union activities were under surveillance, the Respondent has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act, in violation of Section 8(a)(1) of the Act.

2. By permanently laying off employees Tony Hernandez, George Urdiales, and Alfred Walters because of employees' union sympathies, the Respondent has discriminated in regard to the hire or tenure or terms and conditions of employment of its employees, thereby discouraging membership in a labor organization, in violation of Section 8(a)(3) and (1) of the Act.

3. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(3) and (1) of the Act by permanently laying off Tony Hernandez, George Urdiales, and Alfred Walters, we shall order the Respondent to make them whole for any loss of earnings and other benefits suffered as a result of the dis-

<sup>2</sup> See *U-Bee, Ltd.*, 315 NLRB 667 (1994).

crimination against them. In this regard, the Respondent agreed in the settlement agreement that it would pay Hernandez \$5244 in backpay, that it would pay Urdiales \$6293 in backpay, and that it would pay Walters \$7800 in backpay, to cover the period from their terminations until the effective date of the settlement agreement. The Respondent also agreed to pay Walters an additional amount, up to \$6000, if he was required to reimburse the Michigan Unemployment Agency for unemployment compensation received for that same period. As indicated above, the Respondent has not paid any backpay to the three discriminatees, and therefore we shall order the Respondent to pay them the amounts set forth in the settlement agreement.

We find, however, that the backpay due Hernandez, Urdiales, and Walters should not be limited to these amounts. As set forth above, the settlement agreement provided that, in the event of noncompliance, the Board could issue an Order "providing full remedy for the violations found as is customary to remedy such violations, including but not limited to the provisions of this Settlement Agreement." Thus, under this language, it is appropriate to provide the "customary" remedies of reinstatement, full backpay, expungement of the Respondent's personnel records, and notice posting.<sup>3</sup>

The additional backpay due the three employees shall be computed as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). However, because we shall order the Respondent to pay the liquidated backpay amounts specified in the settlement agreement, the applicable backpay periods will commence on January 15, 2005, the date following the backpay period encompassed by the terms of the settlement agreement. We find it necessary to impose this limitation to prevent an unintended double recovery for the periods running from the date that the three discriminatees were permanently laid off to the effective date of the settlement agreement.

We shall also order the Respondent to offer Hernandez, Urdiales, and Walters full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed. The three employees waived reinstatement in exchange for the backpay required to be paid them under the settlement agreement. Inasmuch as the Respondent has failed to remit any backpay to the employees and the Regional Director has effectively revoked the settlement agreement, we find that a reinstatement remedy is appropriate here.

<sup>3</sup> Although the Respondent posted a notice to employees pursuant to the settlement agreement, we find that a notice posting remedy is appropriate here. The notice required by the settlement agreement differs in material respects from the notice that is warranted in view of our findings and Order herein.

In addition, the Respondent shall be required to remove from its files all references to the unlawful permanent layoffs of Hernandez, Urdiales, and Walters, and to notify them in writing that this has been done and that the layoffs will not be used against them in any way.

#### ORDER

The National Labor Relations Board orders that the Respondent, John Pomaville d/b/a John Pomaville Plumbing, a sole proprietorship, Lansing, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Advising employees that it does not want any union activity in its shop.

(b) Directing employees to confirm in writing that they will not engage in union activities.

(c) Distributing letters to employees threatening them with discharge if they engage in any union activity and requiring them to sign and return the letters to the Respondent.

(d) Conveying the impression to employees that their union activities are under surveillance.

(e) Permanently laying off or otherwise discriminating against employees because they support Local 333, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO, or any other labor organization.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Tony Hernandez, George Urdiales, and Alfred Walters full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed.

(b) Remit to Region 7 \$5244 to be disbursed to Tony Hernandez, \$6293 to be disbursed to George Urdiales, and \$7800 to be disbursed to Alfred Walters, plus any additional amount due to Walters, up to \$6000, for money that he may be required to reimburse to the Michigan Unemployment Agency, in accordance with the settlement agreement approved by the Regional Director on January 13, 2005, and make them whole for any loss of earnings and other benefits suffered since January 14, 2005, as a result of their unlawful permanent layoffs, with interest, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, remove from its files all references to the unlawful permanent layoffs of Tony Hernandez, George Urdiales, and Alfred Walters, and within 3 days thereafter, notify them in

writing that this has been done and that the unlawful layoffs will not be used against them in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Lansing, Michigan, copies of the attached notice marked "Appendix."<sup>4</sup> Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 5, 2004.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. July 22, 2005

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

<sup>4</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

### NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

#### FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT advise employees that we do not want any union activity in our shop.

WE WILL NOT direct employees to confirm in writing that they will not engage in union activities.

WE WILL NOT distribute letters to employees threatening them with discharge if they engage in any union activity and require them to sign and return the letters to us.

WE WILL NOT convey the impression to employees that their union activities are under surveillance.

WE WILL NOT permanently lay off or otherwise discriminate against employees because they support Local 333, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO, or any other labor organization.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer Tony Hernandez, George Urdiales, and Alfred Walters full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed.

WE WILL pay to Region 7 \$5244 to be disbursed to Tony Hernandez, \$6293 to be disbursed to George Urdiales, and \$7800 to be disbursed to Alfred Walters, plus any additional amount due to Walters, up to \$6000, for money that he may be required to reimburse to the Michigan Unemployment Agency, in accordance with the settlement agreement approved by the Regional Director on January 13, 2005, and make them whole for any loss of earnings and other benefits suffered since January 14, 2005, as a result of their unlawful permanent layoffs, with interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files all references to the unlawful permanent layoffs of Tony Hernandez, George Urdiales, and Alfred Walters, and WE WILL, within 3 days thereafter, notify them in writing that this has been done

and that the unlawful layoffs will not be used against them in any way.

JOHN POMAVILLE D/B/A JOHN POMAVILLE  
PLUMBING